

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WILLIAMSVILLE SUBURBAN, LLC
and**

**Cases 03-CA-167978
03-CA-168008**

**SHERIDAN MANOR, LLC
and**

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST**

**MOTION TO TRANSFER PROCEEDINGS TO BOARD AND
FOR DEFAULT JUDGMENT AND ISSUANCE OF
BOARD'S DECISION AND ORDER**

PLEASE TAKE NOTICE that, pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, (Board's Rules and Regulations), the undersigned Counsel for the General Counsel hereby moves that the National Labor Relations Board (Board): (1) transfer the above-captioned matter and continue the proceedings before the Board; (2) deem the allegations in the Consolidated Complaint (Complaint) as admitted to be true without taking substantive evidence supporting the allegations; and (3) issue a Decision and Order granting Default Judgment and ordering Williamsville Suburban, LLC (Respondent Williamsville) and Sheridan Manor, LLC (Respondent Sheridan) (collectively, Respondents), to appropriately remedy the unfair labor practices found; and grant such other, further, and different relief as may be proper under the circumstances. In support of this motion, Counsel for the General Counsel shows and alleges that:

1. The charge in Case 03-CA-167978 was filed by 1199 SEIU United Healthcare Workers East (Union) on January 20, 2016, and a copy was served on Respondent Williamsville by U.S. mail on the same date. Copies of the charge and affidavit of service are attached as Exhibit 1.

2. The charge in Case 03-CA-168008 was filed by the Union on January 20, 2016, and a copy was served on Respondent Sheridan by U.S. mail on the same date. Copies of the charge and affidavit of service are attached as Exhibit 2.

3. On May 9, 2016, the Union and each Respondent entered into a bilateral Settlement Agreement with Notices to Employees which were approved by the Regional Director on May 11, 2016. Pursuant to the terms of the Settlement Agreements, Respondents agreed to furnish the Union with the information requested by the Union in letters dated December 15, 2015, and January 4 and 12, 2016. The Union requested the same information in both cases: 1) hours worked by bargaining unit employees as well as hours worked by agency employees; and 2) list of any/all new hires including bargaining unit employees and agency employees. The requested information was to be provided weekly. A copy of the settlement agreement for Case 03-CA-167978 is attached as Exhibit 3. A copy of the settlement agreement for Case 03-CA-168008 is attached as Exhibit 4.

4. Under the terms of the "Performance" section of each Settlement Agreement, upon approval by the Regional Director:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this

Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

5. By letter dated May 16, 2016, the Compliance Officer for Region Three sent Respondent Williamsville a copy of the conformed Settlement Agreement for Case 03-CA-167978, along with a cover letter advising Respondent to take the steps necessary to comply with the Settlement Agreement. The letter provided dates of May 25, 2016 to return the signed and dated Notice to Employees and Certification of Compliance forms, and May 31, 2016 for the production of the information itself. A copy of the letter is attached as Exhibit 5.

6. By letter dated May 18, 2016, the Compliance Officer for Region Three sent Respondent Sheridan a copy of the conformed Settlement Agreement for Case 03-CA-168008, along with a letter advising Respondent to take the steps necessary to comply with the Settlement Agreement. The letter provided dates of May 25, 2016 to return the signed and dated Notice to Employees and Certification of Compliance forms, and May 31, 2016 for the production of the information itself. A copy of the letter is attached as Exhibit 6.

7. Respondents failed to return the signed and dated Notices to Employees and Certification of Compliance forms by May 25, 2016 and failed to produce the requested information by May 31, 2016. The Compliance Officer for Region Three spoke to Respondents' counsel on May 31, 2016 and notified him of Respondents' failure to abide by the Settlement Agreements.

8. By e-mail dated June 7, 2016, the Compliance Officer for Region Three sent Respondents, via Respondents' counsel, a 14-day default notice informing them that they had not complied with the terms of the Settlement Agreements by not supplying any of the information at issue in either Settlement Agreement, returning the signed Notices to Employees, or returning the Certification of Compliance forms. The Compliance Officer advised Respondents of their obligation to comply with the terms of the Settlement Agreements by June 21, 2016 and warned Respondents that their failure to do so may result in Region Three issuing complaint pursuant to the terms of the Settlement Agreements. Respondents' counsel responded by e-mail the same day acknowledging receipt of the default notice. A copy of the default notice is attached as Exhibit 7. A copy of Respondents' counsel's response is attached as Exhibit 8.

9. On about June 17, 2016, the Union informed the Compliance Officer that it had received certain information from Respondent Williamsville, and provided that information to the Compliance Officer. The same day, the Compliance Officer e-mailed Respondents' counsel and inquired as to how the provided information was compliant with the Settlement Agreement. The Compliance Officer extended the default date to June 27, 2016 to attempt to secure compliance. A copy of the Compliance Officer's June 17, 2016 correspondence with Respondents' counsel is attached as Exhibit 9.

10. On June 27, 2016, the Compliance Officer for Region Three advised Respondents' counsel via e-mail that Respondents had not complied with the Settlement Agreements. The Compliance Officer noted that the Union had received insufficient information from Respondent Williamsville regarding Case 03-CA-167978, and no information from Respondent Sheridan regarding Case 03-CA-168008. The Compliance Officer requested that Respondents provide to the Union, and to the Compliance Officer, any further information it intended to produce that same day. The Compliance Officer advised Respondents' counsel that if

Respondents did not comply with the Settlement Agreements by June 27, 2016, Region Three would issue complaint. A copy of the Compliance Officer's June 27, 2016 e-mail to Respondents' counsel is attached as Exhibit 10.

11. Respondents failed to produce further responsive information. Respondents failed to provide signed Notices to Employees. Respondents also failed to provide Certification of Compliance forms. On June 30, 2016, the Union informed the Compliance Officer by e-mail that Notices to Employees were not posted at Respondents' facilities. A copy of the Union's e-mail to the Compliance Officer is attached as Exhibit 11.

12. In light of Respondents' failure to comply with the Settlement Agreements, the language of the Settlement Agreements described above applies and issuance of the accompanying Complaint and filing of this Motion for Default Judgment seeks to invoke those terms. A copy of the Complaint is attached as Exhibit 12.

WHEREFORE, the General Counsel respectfully requests that a Decision and Order issue in the above-captioned matter:

1. Transferring the case and continuing the proceedings;
2. Finding all of the allegations in the Complaint to be true;
3. Granting default judgment against Respondent;
4. Ordering Respondents to cease and desist from: failing to timely respond to information requests made by the Union and failing to provide the Union with information that is necessary and relevant to its role as bargaining representative.
5. Ordering Respondents to promptly furnish the Union with the information requested on December 15, 2015, January 4 and 12, 2016 as follows:
 - a. Weekly records of hours worked by bargaining unit employees as well as hours worked by agency employees from December 15, 2015 to the present; and

- b. Weekly lists of any/all new hires including bargaining unit employees and agency employees from December 15, 2015 to the present.
6. Ordering Respondents to promptly post copies of the Notices to Employees in conspicuous places in and about Respondents' facilities, including all places where notices to employees are customarily posted, for 60 consecutive days.
7. Ordering Respondents to promptly complete the Certification of Compliance forms, including completing and returning Certificate of Compliance Part One along with one signed and dated original Notice; completing and returning Certificate of Compliance Part Two; and e-mailing to the Compliance Officer copies of Respondents' responses to the Union's information requests.
8. Ordering such other relief as the Board deems just and proper.

DATED at Albany, New York this 14th day of July, 2016.

Respectfully submitted,

/s/ Alicia E. Pender
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